

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARY MILLER,

Plaintiff,

- against -

CUMULUS MEDIA, INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Gary Miller (“Miller” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Cumulus Media, Inc. (“Cumulus” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of American rapper Tupac Shakur, owned and registered by Miller, a New York City based photojournalist. Accordingly, Miller seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Miller is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 137-02 224 Street, Laurelton, New York 11413. Miller's photographs have appeared in many publications around the United States.

6. Upon information and belief, Cumulus is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 2 Pennsylvania Plaza, #1700, New York, New York 10121. At all times material hereto, Cumulus has owned and operated a website at the URL: <http://www.939thebeat.com/> (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. In November 1994, Tupac Shakur was shot at New York's Quad Recording Studios. Dexter Isaac, a prisoner, said he was hired by hip hop manager Jimmy Rosemond to shoot and mug Shakur. Isaac was given \$2,500 dollars plus jewelry to commit the ambush.

8. In November 1999, Miller photographed Shakur getting lifted into an ambulance after the attack wrapped in bandages (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

9. Miller is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the United State Copyright Office and was given Copyright Registration Number VA 1-233-155.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about September 13, 2016, Cumulus ran an article on the Website entitled *TUPAC: 20 Years later "Who shot cha?" PLUS NEW Movie trailer*. See <http://www.939thebeat.com/2016/09/13/tupac-20-years-later-who-shot-cha-plus-new-movie-trailer/>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

12. Cumulus did not license the Photograph from Plaintiff for its article, nor did Cumulus have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST CUMULUS)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Cumulus infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Cumulus is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Cumulus have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Cumulus be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or 2) alternatively, statutory damages up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
October 10, 2016

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Gary Miller